**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**
**AND**
**HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Appeal No.115 of 2007**

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**Between:**

Khaja Khan …Appellant

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**And**

Revenue Divisional Officer, Sangareddy,
and another. …Respondents.

**:: J U D G M E N T ::**

Counsel for the appellant : Sri B.Vijaysen Reddy

Counsel for the respondents : Assistant Government Pleader for Revenue

**5th February, 2007**

**Per G.S. SINGHVI, C.J.**

The appellant has been compelled to file appeal under Clause 15 of the Letters Patent because the writ petition filed by him with the complaint that he was being dispossessed from the land measuring Ac.5.00 comprised in Survey No.267 situated at Siddapur Village, Sadasivapet Mandal, Medak District without following the procedure established by law was summarily dismissed by the learned Single Judge without even requiring the respondents to file counter affidavit.

Although the appeal has been listed for admission hearing, with the consent of the learned counsel for the appellant and the learned

Assistant Government Pleader for Revenue, we have heard arguments on the merits of the case and are finally disposing of the appeal.

In the affidavit filed by him, the appellant averred that the land in question was assigned to his father in 1962 and patta was issued in his name, that his father and he himself cultivated the land and that he does not have any other source of livelihood. He further averred that after the demise of his father, his name was mutated in the revenue records and this is evinced by pahanis for the years 1994 to 2005. The immediate cause for the appellant to seek intervention of the Court was that on 25-11-2006, Mandal Revenue Officer, Sadasivpet Mandal came to the spot and started taking measurements. According to the appellant, this exercise was a prelude to his dispossession from the land in question. Along with the affidavit, the petitioner (the appellant herein) filed Photostat copies of the revenue records. The averments contained in paragraphs 3 and 4 of the appellant's affidavit, which have material bearing on the decision of this appeal, read as under:

> "3. I submit that I am the absolute owner and possessor of agricultural land admeasuring Ac.5.00 in Sy.No.267 situated at Siddapur Village, Sadashivpet Mandal, Medak Dist. In the year 1962, my father applied for assignment of Ac.5.00 land for the purpose of agriculture. As we were landless poor persons, the then Tahsildar having conducted enquiry and being satisfied with our eligibility, recommended assignment in our favour. Thereafter, the agricultural land has been assigned to us. My father got the assignment patta made in my name. My father and myself cultivated the lands and we had been solely depended on this agricultural land for our livelihood. After the death of my father about 20 years back, I continued the cultivation in the lands. I have been issued pattadar passbooks and title deeds under the provisions of A.P. Rights in Land and Pattadar Passbooks Act, 1971, which are filed herewith as Ex.P1. My name has been mutated in the revenue records. The pahanis for the years 1994 till 2005 are filed herewith as Ex.P2. Depending upon availability of water, I had been cultivating the land. For the past few years, since there was scant rainfall, I have kept the

lands fallow.

4. While so, to my surprise, I came to know that some officials from the office of the 2nd respondent were taking measurements of my lands on 25-11-2006. Immediately, I went to the lands and made enquiries and I was informed by them that the land belongs to Government. I tried to convince them that the lands are under my possession and enjoyment and that I am the pattadar of these lands and long back these lands are assigned to me. Despite the same, the subordinates of the respondents asserted that, I have got no interest in the lands. I went to the office of the 2nd respondent on 26-11-2006 to find out the actual reason for the officials to inspect my lands. But deliberately, I was not furnished with any information. I apprehend that the respondents in the guise of some proceedings are seeking to dispossess me from my agricultural land. I was not issued any notice at any point of time. Even in the pahanis for the years 2004-2005, my name still continues as pattadar and possessor, so the allegation of the respondents that the land is government land is false and incorrect. If directions are not issued to the respondents not to interfere with the peaceful possession and enjoyment over my agricultural land, I will be put to irreparable loss and injury."

The learned Single Judge did not issue formal notice to the respondents, but dismissed the writ petition by relying on the oral statement made by the learned Assistant Government Pleader for Revenue (General PT) that the assignment of land in favour of the appellant's father was cancelled on the ground of violation of the conditions of assignment and that the land was resumed and the same was assigned to landless poor persons. The learned Single Judge observed that there was no reason to doubt the correctness of the submissions made by the learned Assistant Government Pleader and dismissed the writ petition.

In our opinion, the methodology adopted by the learned Single Judge for dismissing the writ petition is wholly unsatisfactory. Admittedly,

the land was assigned to the appellant's father in 1962 i.e. 42 years prior to the action taken by respondent No.2 for cancellation of the assignment and dispossessing the appellant. The averments contained in paragraphs 3 and 4 of the appellant's affidavit remained uncontroverted because the respondents did not get any opportunity to file counter affidavit. Therefore, the learned Single Judge was not at all justified in dismissing the writ petition by assuming that whatever the learned Assistant Government Pleader had stated at the bar was correct. Strangely enough, the learned Assistant Government Pleader did not disclose the date on which notice was issued to the appellant proposing cancellation of assignment made in favour of his father, the date on which the assignment was actually cancelled and the land was resumed. The date on which the land in question is said to have been assigned to other landless poor persons was also not disclosed. Even before us, the learned Assistant Government Pleader could not give these particulars. Therefore, it must be held that the action taken by the respondents for cancellation of the assignment and dispossession of the appellant is vitiated due to gross violation of the rules of natural justice and the learned Single Judge gravely erred by dismissing the writ petition.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition is admitted for hearing. The respondents are directed to file counter affidavit within eight weeks from today. Thereafter, the case be listed for hearing.

In order to ensure that the appellant is not deprived of his property, we direct the respondents or any other functionary of the government not to take any step for dispossessing the appellant till the disposal of the writ petition in terms of this order.

As a sequel to disposal of the appeal in the manner indicated above, WAMP.No.186 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

**G.S.SINGHVI, C.J.**

5th February, 2007

**C.V.NAGARJUNA REDDY, J.**

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